

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLANNED PARENTHOOD	:	CIVIL ACTION
SOUTHEASTERN PENNSYLVANIA,	:	
NEW VOICES PITTSBURGH, and	:	
MICHELLE BONAVENTURA, on behalf	:	No. 2015-
of themselves and all others similarly situated,	:	
	:	
Plaintiffs,	:	CLASS ACTION
	:	
v.	:	
	:	
BEVERLY D. MACKERETH,	:	
Secretary of the Pennsylvania	:	
Department of Human Services, and	:	
DIONISIO MIGNACCA, Executive	:	
Director of the Philadelphia County	:	
Assistance Office, in their official capacities,	:	
	:	
Defendants.	:	

**COMPLAINT**

**PRELIMINARY STATEMENT**

1. This action challenges the refusal of the Pennsylvania Department of Human Services (“DHS”), formerly the Department of Public Welfare, to timely transition approximately 85,000 women enrolled in SelectPlan for Women (“SelectPlan”), a category of limited Medicaid benefits covering only family planning care, to full health care coverage either through Medicaid or through subsidized plans on the Health Insurance Exchange (also known as the “Federally Facilitated Marketplace” or “Marketplace”). DHS has refused to timely transfer approximately 70,000 women who have been receiving limited Medicaid benefits through SelectPlan to full Medicaid coverage effective January 1, 2015, and to timely refer approximately 15,000 women receiving SelectPlan to the Marketplace for subsidized health insurance. Due to DHS’s unlawful delay, women who are eligible for full Medicaid coverage

are being forced to wait up to six months to receive that coverage, or to navigate a complex, burdensome, and unnecessary application process. Women who are not eligible for full Medicaid coverage, but who are eligible for subsidized health insurance through the Marketplace, will be unable to enroll for that insurance for the rest of 2015 if they are not referred to the Marketplace in time to enroll by February 15, 2015.

2. DHS administers Pennsylvania's Medicaid program, which encompasses multiple categories, each with its own distinct financial and non-financial, categorical eligibility criteria. One of these categories, which only provides limited Medicaid benefits (family planning care), is called SelectPlan for Women. Most individuals receiving SelectPlan benefits have until now not been eligible for full Medicaid coverage, as a result of their income and/or the non-financial requirements for the other categories.

3. As part of its *Healthy Pennsylvania* ("*Healthy PA*") initiative, DHS has elected to expand Medicaid eligibility to include individuals with countable incomes up to 138% of the federal poverty limit, beginning on January 1, 2015. As a result, approximately 70,000 women who have been receiving limited benefits through the SelectPlan category are now entitled to full Medicaid coverage in the new *Healthy PA*/Medicaid Expansion category effective January 1, 2015.

4. Rather than automatically transferring eligible women into the new Medicaid category for full coverage effective January 1, 2015, DHS has decided to delay providing coverage by manually reviewing each woman's case file over a several month period between January 1 and June 30, 2015. At the same time, DHS automatically and timely transferred other groups of individuals who have been receiving Medicaid in limited coverage categories to *Healthy PA*, so that their benefits in the new category began on January 1, 2015.

5. While federal law confers upon states some latitude in administering their Medicaid programs, states must comply with detailed federal statutory and regulatory Medicaid requirements. The Social Security Act and its implementing regulations require that states provide Medicaid “with reasonable promptness to all eligible individuals” and administer Medicaid “in a manner consistent with simplicity of administration and the best interests of the recipients,” using “reasonable standards.” States are also required to timely screen those individuals who are not eligible for full Medicaid and timely refer them to the Marketplace for subsidized health insurance through the Affordable Care Act without requiring a separate application.

6. Instead of timely transferring eligible women to full Medicaid and timely referring women who are not eligible for full Medicaid to the Marketplace, DHS sent all women who are getting SelectPlan confusing and vague notices that do not provide clear and adequate information.

7. This class action seeks declaratory and injunctive relief on behalf of women who have been receiving limited Medicaid benefits in the SelectPlan category who are eligible either for full Medicaid benefits or for referral to the Marketplace for subsidized health insurance, but whom DHS has refused to timely transfer to full benefits effective January 1, 2015, or to timely refer to the Marketplace so they can enroll before the February 15, 2015 open enrollment deadline. DHS’ actions violate the Social Security Act.

#### **JURISDICTION**

8. This Court’s subject matter jurisdiction over this action is conferred by 28 U.S.C. § 1331, and by 28 U.S.C. § 1343(a)(3) and (4), which provide for jurisdiction over actions under federal civil rights laws.

9. Plaintiffs' claims for declaratory, injunctive, and other relief are authorized by 28 U.S.C. §§ 2201 and 2202, Rule 57 of the Federal Rules of Civil Procedure, and by 42 U.S.C. § 1983.

10. Plaintiffs' claims for attorneys' fees and costs are authorized by 42 U.S.C. § 1988.

11. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391.

### **PARTIES**

12. Plaintiff Planned Parenthood Southeastern Pennsylvania ("PPSP") is an affiliate of the Planned Parenthood Federation of America. PPSP is a non-profit organization whose principal place of business is in Philadelphia, Pennsylvania. PPSP provides family planning care and other reproductive health services to individuals in Chester, Delaware, Montgomery and Philadelphia counties. In addition to providing medical care, PPSP has devoted considerable organizational resources to assisting its eligible patients in applying for SelectPlan and other health insurance and advocates for access to health care.

13. Among the individuals PPSP serves are women who have only been eligible for SelectPlan health coverage in the past, but who are now eligible to receive more comprehensive coverage through *Healthy PA*/Medicaid expansion. When women who receive family planning services from PPSP need additional medical care not covered by SelectPlan, and not provided by PPSP, PPSP must expend time, money, and other resources to assist them in finding other sources of care, a task made much more difficult by lack of full Medicaid or other comprehensive health insurance.

14. PPSP will be forced to expend time, money, and other resources to assist women who have been receiving SelectPlan and who should be timely transferred by DHS to full

Medicaid or timely referred by DHS to the Marketplace but who will instead need assistance from PPSP because of DHS's refusal to take timely action. PPSP and the women it serves have been and will be harmed by Defendants' refusal to timely transfer eligible women to full Medicaid or to timely refer them to the Marketplace.

15. Plaintiff New Voices Pittsburgh: Women of Color for Reproductive Justice ("New Voices") is a non-profit grassroots organization whose principal place of business is in Pittsburgh, Pennsylvania. New Voices' mission is to promote the complete health and well-being of black women and girls in the greater Pittsburgh region.

16. New Voices was founded in 2004, and over the past decade has served over 10,000 women. New Voices has assisted women by doing outreach and education about the health care system and about health insurance options. New Voices staff served as Certified Applications Counselors from October 2013 through March 2014. New Voices contacted approximately 6,000 individuals to assist them in determining if they were eligible for Medicaid or subsidized health insurance through the Marketplace and, when eligible, to assist them in enrolling in coverage. The individuals that New Voices has assisted include women who were only eligible for SelectPlan in the past, and who now should be eligible for full Medicaid through *Healthy PA*/Medicaid expansion.

17. New Voices will be forced to expend time, money, and other resources to assist individuals who should be timely transferred by DHS to full Medicaid or timely referred by DHS to the Marketplace and who will instead need assistance from New Voices because of DHS's refusal to take timely action. New Voices and the women it serves have been and will be harmed by Defendants' refusal to timely transfer eligible women to full Medicaid or to timely refer them to the Marketplace.

18. Plaintiff Michelle Bonaventura is a citizen of the United States of America and a resident of Allegheny County, Pennsylvania.

19. Ms. Bonaventura is an adult recipient of limited Medicaid benefits in the SelectPlan category, whom DHS has improperly refused to either transfer to full Medicaid benefits effective January 1, 2015 or to timely refer to the Marketplace for subsidized health insurance. She was sent vague, confusing, and inadequate notices of her Medicaid situation by DHS in November, 2014 and on December 23, 2014.

20. Defendant Beverly D. Mackereth is the Secretary of the Pennsylvania Department of Human Services. She is responsible for ensuring that DHS's Medicaid program provides benefits with reasonable promptness and is operated according to reasonable standards, in a manner consistent with simplicity of administration and the best interests of the recipients. She is likewise responsible for ensuring that individuals who are found not eligible for full Medicaid are timely referred to the Marketplace, and that the Pennsylvania Medicaid program complies with the Social Security Act and its implementing regulations. She is sued in her official capacity.

21. Defendant Dionisio Mignacca is the Executive Director of the Philadelphia County Assistance Office. He is responsible for ensuring that DHS's Medicaid program in Philadelphia provides benefits with reasonable promptness; is operated according to reasonable standards, in a manner consistent with simplicity of administration and the best interests of recipients; and ensures that individuals who are found not eligible for full Medicaid are timely referred to the Marketplace, and that the Medicaid program in Philadelphia complies with the Social Security Act and its implementing regulations. He is sued in his official capacity.

**CLASS ACTION ALLEGATIONS**

22. Plaintiffs PPSP, New Voices, and Michelle Bonaventura bring this action on behalf of themselves and all others similarly situated, pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure. Plaintiffs PPSP and New Voices bring this action on behalf of their clients and members who are enrolled in SelectPlan.

23. The Plaintiff class consists of all current recipients of limited Medicaid benefits in the SelectPlan category in Pennsylvania whom DHS has refused to transfer to full Medicaid benefits packages effective January 1, 2015, or refused to refer to the Health Insurance Exchange so that they can enroll prior to February 15, 2015.

24. The requirements of Rules 23(a) and (b)(2) are met in that:

a. The class is so numerous that joinder of all members is impracticable. DHS has reported that approximately 85,000 women are currently receiving limited Medicaid benefits in the SelectPlan category, all of whom are eligible either for transfer to full Medicaid as of January 1, 2015, or for referral to the Health Insurance Exchange so that they can enroll prior to February 15, 2015, without requiring a separate application.

b. There are questions of law and fact common to the class, including whether Defendants' practices violate the Social Security Act. Defendants have refused to timely and automatically transfer members of the class to full Medicaid as of January 1, 2015, or to refer them to the Health Insurance Exchange so that they can enroll prior to February 15, 2015, and have sent inadequate notice to all members of the class.

c. The claims of the representative parties are typical of the claims of the class members and the representative parties will fairly and adequately protect the interests of the class.

Moreover, Plaintiffs are represented by competent counsel who have represented classes in other class actions and in numerous cases involving Medicaid and other public benefits programs; and

d. Defendants have acted and have refused to act on grounds generally applicable to the members of the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

### **LEGAL FRAMEWORK**

25. Medicaid is a joint federal-state assistance program authorized by Title XIX of the Social Security Act that provides health insurance coverage to certain low-income individuals. Medicaid is administered by the states under the supervision of the United States Department of Health and Human Services. 42 U.S.C. §§ 1396a-1369w-5. DHS administers the Medicaid program for Pennsylvania.

26. The Social Security Act requires states to provide Medicaid “with reasonable promptness to all eligible individuals.” 42 U.S.C. § 1396a(a)(8).

27. The Social Security Act requires states to administer their Medicaid programs according to reasonable standards. 42 U.S.C. § 1396a(a)(17).

28. The Social Security Act requires states to operate their Medicaid programs “in a manner consistent with simplicity of administration and the best interests of the recipients.” 42 U.S.C. § 1396a(a)(19).

29. The Social Security Act requires states to ensure that individuals who are found not eligible for Medicaid are “screened for eligibility for enrollment in qualified health plans” offered through the Health Insurance Exchange; that they be screened for premium assistance, if applicable; and that, if eligible, they be “enrolled in such a plan without having to submit an additional or separate application”; and further requires states to ensure that “such individuals

receive information regarding reduced cost sharing for eligible individuals . . . and any other assistance or subsidies available for coverage obtained through the Exchange.” 42 U.S.C. § 1396w-3(b)(1)(C).

### **STATEMENT OF FACTS**

#### **Medicaid and SelectPlan for Women in Pennsylvania**

30. Until January 1, 2015, comprehensive federal Medicaid coverage in Pennsylvania was available only to specific categories of low-income Pennsylvanians; namely, children, seniors, individuals with significant and long-term disabilities, pregnant women, and very low-income parents and other related caretakers of minor children. Each of these Medicaid categories has its own income and asset limits, as well as categorical, non-financial rules for determining eligibility.

31. Some states, including Pennsylvania, have opted to cover a few more categories of individuals through state-funded Medicaid lookalike coverage. In Pennsylvania, the state-funded program is called General Assistance-related Medical-Assistance (“GA-MA”). GA-MA coverage has been available to very low-income individuals in certain categories, including individuals with shorter-term disabilities, survivors of domestic violence (for nine months in a lifetime), and individuals in active treatment for drug and alcohol abuse (for nine months in a lifetime).

32. In addition to these categories of eligibility for comprehensive Medicaid or Medicaid lookalike GA-MA coverage, DHS has provided limited Medicaid benefits to cover family planning services through a Medicaid category called SelectPlan for Women. SelectPlan was created in 2007 as a Medicaid Demonstration Project under Section 1115(a) of the Social Security Act, to provide family planning care coverage for women aged 18 through 44 who did

not qualify for full coverage Medicaid or GA-MA in Pennsylvania because they did not fit into a category of eligibility for more comprehensive coverage. SelectPlan coverage is available to women with incomes up to 214% of the federal poverty line.

33. Pursuant to DHS's Section 1115 Demonstration, and unlike other Medicaid or GA-MA coverage in Pennsylvania, SelectPlan covers only family planning services. It does not cover hospitalizations, surgical procedures, or prescriptions other than for contraception and family planning supplies. It does not provide coverage for treatment of a sinus infection, or high blood pressure, or for testing to determine if a woman has a heart condition, or lab work to determine whether a woman is anemic, or care needed for a broken arm or a sprained ankle. It does not cover routine immunizations, or permit a woman to see a medical care provider other than for routine gynecologic care. It does not cover follow up or referrals for other conditions the gynecologist might discover or a myriad of other medical needs that full Medicaid benefits cover.

34. In September 2013, Pennsylvania Governor Tom Corbett announced that Pennsylvania would expand Medicaid for individuals between the ages of 19 and 64 with incomes at or below 133% of the federal poverty guidelines (plus a 5% income disregard), as authorized by the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010). Medicaid expansion took effect on January 1, 2015. As Pennsylvania's state Medicaid agency, DHS is responsible for implementing Medicaid expansion.

35. Low-income Pennsylvanians who became newly eligible for the new *Healthy PA*/Medicaid Expansion category of Medicaid on January 1, 2015 receive coverage in ten categories of "Essential Health Benefits" as required by the ACA. 42 U.S.C. § 1396u-7(b)(5). Categories of benefits include ambulatory patient services, emergency services, hospitalizations,

behavioral health treatment, prescription drug coverage, laboratory services, and preventive and wellness services that include, but are not limited to, the same family planning services offered through SelectPlan.

36. According to the most recent data that DHS released publicly, as of November 2014, 84,988 women were enrolled in SelectPlan. DHS staff had previously estimated that there were 78,000 women in SelectPlan, and that of those 78,000, approximately 67,000 were expected to be eligible for *Healthy PA/Medicaid Expansion*. Because more women than DHS initially projected are covered by SelectPlan, Plaintiffs estimate that the number eligible for *Healthy PA/Medicaid Expansion* is approximately 70,000 women.

37. Many women who receive SelectPlan applied for full Medicaid, and were only found eligible for SelectPlan's limited benefits, because they did not fit into an eligibility category with more comprehensive benefits.

38. Since October 1, 2013, DPW has used Modified Adjusted Gross Income ("MAGI") rules to determine financial eligibility for SelectPlan for Women. These are the same rules used to determine financial eligibility for the new *Healthy PA/Medicaid Expansion* category. DHS does annual eligibility redeterminations (called renewals) for women in the SelectPlan category. Therefore, all women currently receiving SelectPlan have been initially found eligible or have been redetermined to be eligible using the same MAGI rules that are used for *Healthy PA/Medicaid Expansion*—the only difference is the upper income limit.

39. Neither the SelectPlan for Women nor the *Healthy PA/Medicaid Expansion* category of eligibility has an asset limit. Thus, women receiving SelectPlan will not be ineligible for the *Healthy PA/Medicaid Expansion* category due to their assets.

40. Most women who get SelectPlan receive other DHS benefits (for example, full Medicaid coverage for their children, or SNAP benefits/Food Stamps). Women who were not eligible for full Medicaid coverage until the new *Healthy PA*/Medicaid Expansion category was established were often nonetheless eligible for other benefits (like Medicaid for their children, or SNAP/Food Stamps) because the income limits for those other benefit programs were higher than the prior income limits for Medicaid for certain categories of eligible women.

41. Of the 84,988 women receiving SelectPlan as of November 2014, only 10,046 were not receiving other benefits from DHS, a further indication that DHS already has the necessary income and household information to determine their eligibility for *Healthy PA*/Medicaid Expansion.

42. As part of its *Healthy PA* initiative, DHS decided to eliminate SelectPlan as a Medicaid category. It will not permit new applicants to receive SelectPlan benefits after December 31, 2014. Women who are not eligible for other categories of Medicaid in 2014 who applied for coverage during December 2014 were to be evaluated both for SelectPlan and for full Medicaid coverage under *Healthy PA*/Medicaid Expansion. If they were eligible for both, they were to be given SelectPlan only for the month of December 2014, and they were to receive full Medicaid coverage under *Healthy PA*/Medicaid Expansion starting January 1, 2015. The SelectPlan category has been removed from the DHS computer system as an ongoing category of Medicaid benefits.

43. Women who were receiving SelectPlan as of the end of November 2014 will continue to receive SelectPlan benefits through June 30, 2015. Rather than automatically transferring eligible women directly to *Healthy PA*/Medicaid Expansion for full coverage effective January 1, 2015, DHS has decided to have caseworkers manually review each

individual woman's case file to determine eligibility for full coverage benefits in the new *Healthy PA/Medicaid* Expansion category. These reviews are to be performed over a period of several months, during the extension of SelectPlan eligibility. If the caseworker manually determines that a woman is eligible for full coverage, she will then be transferred to the new category.

44. Unlike the women getting SelectPlan, GA-MA recipients who are eligible for the new *Healthy PA/Medicaid* Expansion category were automatically transferred to the new category effective January 1, 2015. DHS is not delaying their coverage by requiring manual reviews over a several-month period.

45. DHS has the technological capacity to timely and automatically transfer eligible women from SelectPlan to full coverage in the new *Healthy PA/Medicaid* Expansion category, effective January 1, 2015, similar to the transfers of individuals from the GA-MA category to the new *Healthy PA/Medicaid* Expansion category, effective January 1, 2015.

46. DHS has the technological capacity to timely and automatically refer women who have been receiving SelectPlan benefits and who are over income for *Healthy PA/Medicaid* expansion to the Marketplace, rather than manually reviewing each file over a several month period.

#### The Transition To *Healthy PA/Medicaid* Expansion

47. On November 5, 2014, DHS began sending "pre-transition letters" to adult Medicaid recipients who would be affected by the changes associated with *Healthy PA/Medicaid* Expansion. All women getting SelectPlan were sent a form letter. A copy of the letter is

attached as Exhibit A. The “Spanish” version, which is chiefly in English, was sent to Spanish speaking women. A copy of the Spanish version is attached as Exhibit B.

48. The SelectPlan pre-transition letters are misleading, confusing, and vague. They state that SelectPlan benefits are ending on December 31, 2014, when they are not. They do not inform women that, if they have income at or below 138% of the federal poverty line, they are eligible for full Medicaid coverage through *Healthy PA*/Medicaid Expansion. Nor do they inform them that, although DHS will evaluate them for transfer to full Medicaid coverage through *Healthy PA*/Medicaid Expansion, DHS is refusing to do so in a timely way, by January 1, 2015, and will instead do so over an extended period. They also do not offer appeal rights.

49. As a result of the misleading, confusing, and vague statements in the pre-transition letters, women receiving SelectPlan benefits were unable to determine what would happen to their benefits, and what their rights were to have DHS transfer them to full Medicaid coverage through *Healthy PA*/Medicaid Expansion.

50. The pre-transition letters advise women that they might be eligible for coverage through either *Healthy PA*/Medicaid Expansion or the Marketplace. The letters did not, however, tell them how to determine which of those programs they might be eligible for. The letters did not include the simple information that women whose incomes were above 138% of the federal poverty line should be referred to subsidized coverage through the Marketplace without needing to do a separate application and that women whose incomes were at or below 138% of the federal poverty line are eligible for *Healthy PA* effective January 1, 2015, without needing to do an application. The letters did not tell them that the open enrollment period for 2015 for the Marketplace ends on February 15, 2015, and that anyone who has not enrolled by

that deadline will not be able to get subsidized insurance through the Marketplace again until 2016.

51. The pre-transition letters also advise recipients to call several DHS telephone numbers for more information. Recipients have had great difficulty in reaching those telephone numbers or in getting accurate information through them.

52. DHS planned to send a second set of notices to women receiving SelectPlan in December 2014. Initially, DHS intended to electronically sort women by income, and to send one form notice to women whose income was under 150% of the federal poverty line and a different form notice to women whose income was over 150% of the poverty line. After Plaintiffs' counsel noted that 150% of the poverty line was not a relevant income threshold, DHS instead sent the same form notice to all women receiving SelectPlan, regardless of income, in late December 2014. A copy of this notice, which was sent to Plaintiff Michelle Bonaventura, is attached as Exhibit C.

53. The December notices told women that DHS would review their cases to determine whether they qualify for any other health care benefits, and if not, would refer them to the Marketplace but did not tell them when this review would be completed. It instructed women that if they wanted their review completed "in a timelier manner" they could submit another application. It did not tell them that there is a deadline of February 15, 2015 for enrolling in subsidized insurance through the Marketplace, nor did it tell them that, if they were eligible for full Medicaid coverage they should be getting that full coverage as of January 1, 2015, rather than experiencing months of delay due to DHS's refusal to act timely.

54. PPSP spends substantial organizational resources helping its clients find health coverage and assisting them in applying for it, including SelectPlan and other health coverage.

When their clients need assistance with determining their eligibility for subsidized health insurance, PPSP staff walk them through their options. Many of PPSP's clients express confusion about their health insurance options. PPSP's lower-income clients are generally unaware of the February 15, 2015 open-enrollment deadline for enrolling in a health insurance plan through the Marketplace.

55. PPSP's client base includes many women who are recipients of SelectPlan and who come to PPSP for family planning and gynecological care. In fiscal year 2014 (July 1, 2013—June 30, 2014), PPSP served 5,361 patients receiving SelectPlan benefits. These patients collectively made nearly 12,000 visits to PPSP in FY 2014. For many of its patients, the care that PPSP provides through SelectPlan is the only health care they receive.

56. For several years, PPSP has assisted uninsured, low-income patients in applying for SelectPlan by completing online applications for them, and by helping them submit their supporting documentation to DHS. The SelectPlan application process is labor-intensive and time-consuming. Many if not most of PPSP's patients find the application process confusing and would have a difficult time completing it on their own. Some of PPSP's clients do not have computer access, and many require PPSP's assistance to successfully complete the online application.

57. PPSP patients who only have SelectPlan often need other medical care from other providers that is not covered by SelectPlan. For example, SelectPlan will not cover a doctor's visit or antibiotics for a sinus or ear infection. SelectPlan will not cover labwork needed for a woman who is anemic. If an exam at a PPSP health center reveals that a woman has high blood pressure or a heart murmur, the follow-up care and medication she may need will not be covered by SelectPlan.

58. PPSP's clinical staff see first-hand how women who are denied full health coverage suffer when they must delay diagnostic tests and prompt treatment. While SelectPlan coverage has been extremely beneficial for these women, it does not cover medical care for most conditions, including diagnostic testing for very serious health problems.

59. PPSP's clinical staff have seen SelectPlan recipients who delayed or went without urgently needed medical care because of financial constraints and lack of adequate insurance. Promptly enrolling these women in more comprehensive health coverage is crucially important to their health. PPSP's clinical staff have identified serious medical conditions—including cancer—in SelectPlan recipients who delayed care because of the cost of uncovered services.

60. The avoidable delay of even a few months in enrolling SelectPlan women into full Medicaid coverage severely endangers the patients PPSP serves. It denies a significant group of PPSP's patients the comprehensive coverage they need. In order to help patients who need medical care that SelectPlan does not cover, PPSP devotes staff time and financial resources to locate reduced-fee providers and coordinate patient care. PPSP most often absorbs the majority of the cost of the uncovered care it provides. Delaying the enrollment of SelectPlan recipients into Healthy PA or the Marketplace could have devastating consequences for PPSP's patients' health.

61. Many of PPSP's patients who have been receiving SelectPlan benefits found the notices they received in November 2014 and at the end of December 2014 to be unclear. They did not understand from the notices what choices they might have, or what DHS intended to do about their health insurance. They have expressed great concern about the expiration of their SelectPlan benefits and about getting access to more comprehensive coverage. They have asked PPSP staff for help understanding the notices and for advice about their options.

62. New Voices expends significant organizational resources in assisting low-income women to apply for Medicaid and for subsidized health insurance through the Marketplace. Among New Voices' members and the women New Voices serves are women who are enrolled in SelectPlan and who are eligible for the broader coverage provided through *Healthy PA* as of January 1, 2015. These women will be directly harmed by being wrongfully deprived of health coverage to which they are entitled, and some of them may suffer adverse health consequences as a result. Other women among New Voices' members and the women the organization serves are enrolled in SelectPlan and will be over the income limit for full Medicaid through *Healthy PA*, and should be referred by DHS to the Marketplace for subsidized health insurance. These women will be directly harmed by being deprived of the opportunity to access subsidized health insurance for the rest of 2015 if DHS does not transfer them to the Marketplace so that they can enroll by the deadline of February 15, 2015, when the open enrollment period for 2015 ends.

63. Ensuring that women can get affordable, accessible, high-quality health care is one of New Voices' primary organizational goals, and New Voices devotes substantial organizational resources to furthering this goal.

64. One of the most important program initiatives of New Voices has been to educate members and other residents of Pittsburgh and surrounding communities about the health care system and about health insurance options for the purpose of helping them and their families get health care. During the first Open Enrollment period from October 1, 2013 – March 31, 2014, New Voices staff served as Certified Application Counselors to enroll our members and our constituency in the federal insurance exchange. New Voices extended this service beyond normal business hours and often was the last resort for women in the region because its office was open in the evening and on the weekend. New Voices also provided technical assistance

over the phone during extended hours. With one part-time staff member, two temporary phone bankers and several dedicated volunteers, New Voices made contact with approximately 6,000 people in its membership and constituency who are primarily Black women and low-income people who need access to healthcare. The most difficult and challenging part of this work was supporting the people who did not qualify for the Marketplace because their income was too low and who also did not qualify for Medicaid because their income was too high and/or they did not fit the profile of a Medicaid recipient in Pennsylvania.

65. New Voices has sponsored community education events to spread the word about periods of open enrollment in the Marketplace. New Voices has conducted phone banks into communities that are home to low-income families to remind them to sign up for health insurance and offer assistance with the application process. New Voices has organized programs community-wide at which navigators and certified application counselors have enrolled people in health insurance. New Voices has also helped individuals apply for Medicaid.

66. New Voices' experience is that many people find applying for Medicaid to be confusing, intimidating, and difficult. It is extremely challenging to complete a Medicaid application correctly on the first attempt and usually requires multiple tries before it is complete. New Voices' experience is that it can take many hours. There are many reasons why this might be so, including: the Medicaid system is complicated and it is not easy to submit documents online to DHS' COMPASS application system; the application uses terminology that is not easily understood by many people; the application requires the collection of a substantial amount of information that might not be at the applicant's fingertips; some people do not have uninterrupted access to a computer or to the Internet; some people have limited English proficiency and literacy challenges. Even if the individual is able to complete the application

online, they must still submit the required documents (such as proof of income) by mail or fax or hand delivery to the county assistance (welfare) office.

67. Similarly, it is difficult for many people to complete an application in person by visiting a county assistance office because it is sometimes difficult to get an appointment; it is often difficult to get phone calls to the help line or county assistance office answered; it may take several trips in order to compile all the documentation and complete all the paperwork required; transportation to the county assistance office may be unavailable or limited; a person with child care responsibilities or paid employment obligations may not be allowed to take the time to go to the county assistance office; or a host of other reasons.

68. However the person completes the application, they still need to wait at least a month for the welfare office to make a decision. The county assistance offices often misplace paperwork that individuals have turned in, and make applicants bring the same paperwork in repeatedly. Even though they are supposed to make decisions as quickly as possible, and not take the entire 30 day time limit set by state law for making a decision, they often take even longer than 30 days.

69. Defendants' actions will strain New Voices' resources as New Voices will have to work to inform their members and the community they serve about the urgency of completing a repeat Medicaid application whose only purpose is to give Defendants information they already have. New Voices will also have to assist its members and others in completing the repeat applications. New Voices will also have to assist its members and others in meeting the February 15, 2015 open enrollment deadline for the Marketplace, because of DHS' failure to timely refer women who have been getting SelectPlan and are not eligible for full Medicaid to the Marketplace. Defendants' actions will injure New Voices by depriving its members and other

people in the community it serves of medical coverage, and in this way will impair New Voices' ability to advance its mission.

70. Michelle Bonaventura is an adult woman who works part-time as a waitress. Her employer does not offer health insurance. Her income is between \$650 and \$750 per month, depending on her wages. Although Ms. Bonaventura wants and needs comprehensive health insurance, the only health insurance she has is SelectPlan for Women. Although she has applied, she has never received full Medicaid.

71. Ms. Bonaventura learned about SelectPlan at a health center located in Pittsburgh. Health center staff helped her fill out and submit the SelectPlan application form in June 2013. Ms. Bonaventura has used SelectPlan coverage for family planning and gynecological care including pap smears and other routine tests. The health care that she gets through SelectPlan is the only health care she has been able to get, because she does not have comprehensive health insurance. She submitted a renewal application for SelectPlan in June 2014.

72. In August 2014, Ms. Bonaventura applied for full Medicaid, and was denied. She has attempted several times to get more information about why she was denied but has had trouble reaching anyone through DHS's helpline.

73. On November 6, 2014, Ms. Bonaventura got a letter from DHS saying that her SelectPlan coverage was ending December 31, 2014. The letter said DHS would contact her and send her more information about how to get other coverage. Since she did not receive any further notice by mid-December, she became very worried and made an appointment for December 19, 2014 at the health center for a pap smear and gynecological check-up before her coverage ran out.

74. Ms. Bonaventura brought the letter from DHS with her to her December 19 appointment at the health center. A staff person told her that SelectPlan had been extended, though the staff person did not know for how long.

75. On December 29, 2014, Ms. Bonaventura received a notice from DHS dated December 23, 2014, that said that her SelectPlan for Women benefits would end no later than June 30, 2015. The notice further stated that DHS is reviewing her case to determine if she qualifies for any other health care benefits, and that she will receive further notification when the review has been completed, informing her of the need for more information or her eligibility result. It did not say when the review would be done. It did say she could get a “timelier” review by filling out yet another application. A copy of this notice is attached as Exhibit C.

76. Ms. Bonaventura tried calling the DHS helpline for more information about her health coverage options several times on both December 29, 2014 and December 30, 2014, and each time, she got a recording that instructed her to call back at a later time due to a high call volume. She has called on other days as well, and has been unable to reach anyone.

77. Ms. Bonaventura is very worried about not having even the limited health insurance coverage which she has now through SelectPlan. Well-woman care is critically important to her because she has a gynecological condition that requires consistent medical care. Ms. Bonaventura wants to enroll in full *Healthy PA*/Medicaid expansion coverage at the earliest possible opportunity. Because she filled out a SelectPlan renewal application on June 23, 2014, as well as an application for Medicaid in August 2014, she believes that DHS has all the information it needs to decide if she is eligible for *Healthy PA*/Medicaid expansion.

#### **CAUSES OF ACTION**

#### **Violations of the Medicaid Act**

78. Defendants have refused to transfer eligible women from limited SelectPlan benefits to full Medicaid coverage with reasonable promptness, in violation of the Social Security Act, 42 U.S.C. § 1396a(a)(8). This violation is actionable pursuant to 42 U.S.C. § 1983.

79. Defendants have refused to timely refer women who have been receiving SelectPlan and who are not eligible for full Medicaid coverage to the Health Insurance Exchange, in violation of the Social Security Act, 42 U.S.C. §1396w-3(b)(1)(C). This violation is actionable pursuant to 42 U.S.C. § 1983.

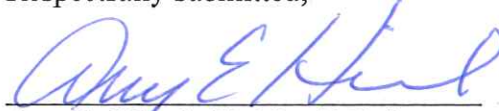
### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Certify this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2) with respect to the proposed class;
- (2) Declare the Defendants' practices and policies pertaining to women receiving limited SelectPlan benefits who are eligible for full Medicaid coverage effective January 1, 2015 or who are eligible for referral to the Federally Facilitated Marketplace/Health Insurance Exchange for enrollment prior to February 15, 2015 invalid and violative of 42 U.S.C. § 1396a(a)(8), 42 U.S.C. § 1396w-3(b)(1)(C), and 42 U.S.C. § 1983;
- (3) Enter injunctive relief pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, requiring Defendants to cease refusing to transfer eligible women from limited SelectPlan benefits to full Medicaid coverage in the *Healthy PA*/Medicaid Expansion category effective January 1, 2015; and cease refusing to timely refer women who are receiving SelectPlan benefits to the Federally Facilitated Marketplace/Health Insurance Exchange so that they can enroll prior to February 15, 2015;
- (4) Award Plaintiffs their costs and reasonable attorneys' fees; and

(5) Provide such other and further relief as this Court deems just and proper.

Respectfully submitted,



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Women's Law Project  
Western Pennsylvania Office  
401 Wood Street, Suite 1020  
Pittsburgh, PA 15222  
Telephone: (412) 281-2892

Attorneys for Plaintiffs

Notice ID: 9000097914

BLAIR CAO  
1100 GREEN AVE.  
ALTOONA, PA 16601-9982

Mail Date: 11/05/2014

Karl Demott



Dear Mr. Demott,

This letter is to inform you of upcoming changes in your SelectPlan for Women coverage. As of December 31, 2014, the SelectPlan for Women program is set to expire. However, the Department is currently looking at all options to ease your transition into a new health care coverage option. You are likely eligible for broader healthcare coverage, offered through the Federally Facilitated Marketplace (FFM) or the Department of Public Welfare.

In December you will receive a notice with information regarding your eligibility and the next steps to take to ensure you have access to health care coverage. If you would like to apply for coverage now through the FFM, you may call 1-800-318-2596 or apply online at [www.healthcare.gov](http://www.healthcare.gov). To apply for MA or the *Healthy Pennsylvania* Private Coverage Option, complete an application online after December 1, 2014, through COMPASS at [www.compass.state.pa.us](http://www.compass.state.pa.us), or call the PA Consumer Service Center at 1-866-550-4355 or contact your local County Assistance Office.

For more information on the *Healthy PA* initiative, please visit [www.healthypa.com](http://www.healthypa.com).



*Exhibit A*

Notice ID: 9000097914

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ID de aviso: 9000097920

BLAIR CAO  
1100 GREEN AVE.  
ALTOONA, PA 16601-9982

Fecha de Envío: 11/05/2014

Karl Demott



Estimado Sr. Demott,

This letter is to inform you of upcoming changes in your SelectPlan for Women coverage. As of December 31, 2014, the SelectPlan for Women program is set to expire. However, the Department is currently looking at all options to ease your transition into a new health care coverage option. You are likely eligible for broader healthcare coverage, offered through the Federally Facilitated Marketplace (FFM) or the Department of Public Welfare.

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For more information on the *Healthy PA* initiative, please visit [www.healthypa.com](http://www.healthypa.com).

Si necesita ayuda con la traducción de esta carta favor de llamar al centro de servicios al 1-877-418-1187 o 1-877-395-8930.

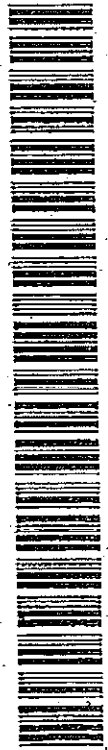


Exhibit B

ID de aviso: 9000097920

Notice ID: 9034131551

DPW-CENTRAL UNIT  
555 WALNUT STREET  
P.O. BOX 2675  
HARRISBURG, PA 17107-1025

Mail Date: 12/23/2014

Michelle Bonaventura



pennsylvania

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF INCOME MAINTENANCE

Record ID: 23/0786030

Telephone: 1-800-842-2020


Notice ID: 9034131551

COMPASS: The fast and easy way to apply for benefits

[www.compass.state.pa.us](http://www.compass.state.pa.us)

*Pennsylvania receives information from other state and federal agencies to verify the information you give them. If you misrepresent, hide, or withhold facts which may affect your eligibility for benefits, you may be required to repay your benefits, and you may be prosecuted and disqualified from receiving certain future benefits.*

DEAR MICHELLE BONAVENTURA,

Which benefit?	This is a summary of your benefits. You can find more information inside this letter.
 Medical Assistance	<p>Your SelectPlan for Women benefits will end no later than June 30, 2015, because the SelectPlan for Women program for current recipients will expire on June 30, 2015.</p> <p>If you do not agree with this decision, fill out the enclosed Fair Hearing form, then mail it or give it to your caseworker by January 22, 2015.</p>

If you have a disability and need this letter in large print or another format, please call our helpline at 1-800-692-7462. TDD Services are available at 1-800-451-5886.

If you do not agree with our decision, you have the right to a Fair Hearing: To learn more about Fair Hearings, read Your Right to Appeal and to a Fair Hearing.

Do you need legal help? You can get free legal help by visiting:

MIDPENN LEGAL SERVICES at 213-A NORTH FRONT STREET, HARRISBURG, PA 17101 or by calling (717) 232-0581.

Exhibit C

 **Your Medical Assistance Benefits****Who qualifies?**

Who qualifies?	When?	Package
MICHELLE	January 1, 2015 through June 30, 2015.	SelectPlan for Women

MICHELLE: Your SelectPlan for Women coverage is set to expire as of June 30, 2015. However, the Department is currently looking at all options to ease your transition into a new health care coverage option. You may be eligible for broader health care coverage, offered through the Federally Facilitated Marketplace (FFM) or the Department of Public Welfare.

The Department will review your case to determine if you qualify for any other health care benefits through the Commonwealth of Pennsylvania. You will receive further notification when the review has been completed informing you of the need for more information or your eligibility result. If you are not found eligible for health care through the Commonwealth, you will be automatically referred to the FFM.

If you would like to assist in completing your review in a timelier manner, complete an application online through COMPASS at [www.compass.state.pa.us](http://www.compass.state.pa.us), or call the PA Consumer Service Center at 1-866-550-4355 or contact your local County Assistance Office.